

APPEAL NO. 040548
FILED APRIL 19, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 29, 2004. The hearing officer resolved the disputed issue by determining that the appellant's (claimant) _____, compensable injury does not include injury to the low back. The claimant appealed on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

Records of the Commission indicated that the hearing officer's decision was mailed to the claimant on February 4, 2004, at the address supplied by the claimant. Pursuant to Rule 102.5(d) the claimant was deemed to have received the hearing officer's decision 5 days later, or on Monday, February 9, 2004. Although the claimant asserts in her appeal that she did not receive the hearing officer's decision until February 13, 2004, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. Thus, the deemed date of receipt is February 9, 2004.

With the deemed date of receipt of February 9, 2004, in accordance with amended Section 410.202, the appeal needed to be filed or mailed no later than March 3, 2004. The claimant's appeal was sent by United States mail and was postmarked March 5, 2004, received by the Commission on March 10, 2004, and, thus, is untimely having been filed after March 3, 2004.

The claimant's appeal being untimely, the decision and order of the hearing officer have become final pursuant to Section 410.169.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Daniel R. Barry
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge